



# The Enforcer

**A PEF Newsletter Devoted to Civil Service Issues**

The Jeff Satz Civil Service Enforcement Quarterly Newsletter

Volume 1, Number 4 (Winter 2002/03)



## PEF FIGHTS AND WINS !

### **PTB scores cannot be used for §70.4 transfers.**

At its January meeting, the Civil Service Commission (CSC) entertained an appeal filed by the PEF Civil Service Enforcement/Research Department regarding improper use of Promotion Test Battery (PTB) scores as the basis for approving §70.4 transfers. After listening to oral arguments by PEF staff and representatives of both the Department of Health (DOH) and the Department of Civil Service (DCS), the CSC sustained PEF's appeal.

***This was contrary to DCS's past policy on §70.4 transfers and also contradicted many statements that DCS has made regarding the PTB.***

This issue initially came to PEF's attention when several members inquired about provisional appointees being "grandfathered" into permanent items in the Community Health Program Manager title. Upon review, PEF's Research Department learned that the appointments were made through the §70.4 transfer process. This process, while not widely

known, can be a legitimate mechanism for making permanent appointments. In part, it requires that the transferee pass either an open-competitive exam for the actual title or an equivalent exam. In addition, the transferee cannot have failed past open-competitive exams for the title.

When PEF requested additional information, however, it learned that DCS had used PTB scores as the "equivalent exam" for approving the transfers. This was contrary to DCS's past policy on §70.4 transfers, which prohibited the use of promotion exams. It also contradicted many statements DCS has made regarding the PTB, including the fact that one cannot "pass or fail" the PTB. Nevertheless, when PEF objected to these appointments, DCS defended them as  
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## **Civil Service Advocate Retires**

Casimir "Cas" Czarkowski, a longtime member of the PEF Statewide Civil Service Committee, has recently retired. Cas has been active in PEF since its inception, having served on the PEF Executive Board for several terms. Cas has always been a strong advocate for preservation of our state's constitutional mandate to have a fair civil service system based on merit and fitness. The members of the Statewide Civil Service Committee will miss him greatly, as he provided a wealth of historical knowledge and his strong-minded spirit was always focused on the civil service rights of our membership. A heartfelt thank you, Cas, from the Statewide Civil Service Committee.

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## Think Vigilance is Overrated? Think Again!

As most State employees know, Civil Service Law, rules, and regulations already stack the deck heavily in the State's favor, such that the State has almost complete discretion when it comes to making decisions about salary grades, exams, and appointments. Therefore, it is even more important to be vigilant, in order to ensure that we don't "win" a case only to have the State do some quiet but fancy footwork a few months later that effectively renders the victory moot.

In a recent issue of *The Enforcer*, we reported a victory in which a PEF member won the right to appeal his performance assessment exam score even though he was already immediately reachable on the eligible list. Although this issue may not seem important on the surface, PEF presented several arguments showing that it *is* important to preserve a candidate's right to appeal an exam score even in such cases.

First, PEF argued that Civil Service Rules specifically allow for exam appeals when there is a manifest material error in the scoring – and nowhere in Civil Service Rules is there a prohibition *against* appealing an exam score simply because the candidate is already reachable.

***The letter did not offer any specific evidence ... nor did it acknowledge that this was a reversal of DCS's original decision.***

In addition, PEF pointed out that the State could not guarantee that *other* candidates would not successfully appeal their scores, in which case this candidate would not necessarily remain immediately reachable.

As reported in *The Enforcer*, PEF brought this appeal before the Civil Service Commission (CSC) and won – the CSC ruled that the member could appeal his exam score. Imagine, then, how outraged the PEF Research Department was when it examined the agenda for the December CSC meeting and found an item proposing that Civil Service Rule 55.2 be amended to disallow exam score appeals by candidates with reachable scores. In other words, the CSC ruled in PEF's favor because the existing Civil Service Rule clearly did not

prohibit such appeals – and then the State quietly went about changing the rule to prohibit such appeals. PEF received no notice of the proposed rule change other than the agenda, which was received only a few days before the scheduled meeting.

Therefore, PEF requested and received a postponement on this item so that PEF could have the opportunity to prepare comments.

*The Enforcer* also reported an important victory related to an alleged canvassing violation in the Office of Children & Family Services (OCFS) in New York City. Basically, OCFS had declared a candidate as nonresponsive because he had allegedly not returned phone calls to their NYC personnel office. However, the agency's Albany personnel office was able to contact the candidate during the same time period with no difficulty, calling into question whether the NYC office had made reasonable efforts to reach the candidate before declaring him nonresponsive.

PEF wrote to the Department of Civil Service (DCS) asking them to investigate; DCS responded with a June 2002 letter stating that they would require OCFS to recanvass the eligible list. However, in July 2002, after inquiring several times when the recanvassing would take

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### ***The Enforcer***

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Executive Editor: Joe Fox, PEF Vice President  
Staff Editors: Stephen Connolly, Amy Sisson

For general questions, comments, or suggestions, please e-mail [EnforcerNews@pef.org](mailto:EnforcerNews@pef.org), or write to: The Enforcer, c/o PEF Civil Service Enforcement Dept., P.O. Box 12414, Albany, New York 12212-2414. Questions specific to individuals or particular situations should be referred to your PEF Field Representative or your PEF Executive Board member.

The information in this newsletter represents general civil service guidelines; readers should be aware that some exceptions to these guidelines may exist.

**Vigilance**

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place, PEF was verbally informed that OCFS was appealing DCS's decision. In November 2002, PEF received a letter from DCS stating that the agency had made reasonable efforts to contact the candidate and DCS therefore would not take any further action on the matter. The letter did not offer any specific evidence showing that the agency had made reasonable efforts, nor did it acknowledge that this was a reversal of DCS's original decision. PEF is currently preparing an appeal of this decision for the Civil Service Commission.

These examples show that even when we think we've won, vigilance is absolutely necessary to make sure that today's victory is not turned into tomorrow's defeat. Therefore, when it appears that PEF has "won" a case or an issue, members should be on the lookout for backdoor management tactics that attempt to achieve the same goal in a different way.

**Update: PEF Legal Department to Take PTB Pre-list Review Case**

The PEF Legal Department will challenge the Department of Civil Service's decision not to allow a pre-list review of any part of the Promotion Test Battery (PTB). The Civil Service Commission had previously refused to entertain PEF's appeal on this matter, thus exhausting the administrative remedies and opening the door for Article 78 litigation.

**Jeff Satz Civil Service Enforcement Committee**



The Jeff Satz Civil Service Enforcement Committee consists of Committee Chair & PEF Vice President Joe Fox and the following members: Nancy Becker (T&F), George Buldrini (DOH), John Clark (DOT), Edith Cooper (DOL), Jeff Janiszewski (DED), Bernie Kahn (SIF), Ron Manuli (DOCS), and Bill Wurster (DEC).

**Test Your Civil Service IQ**



☞ **True** / ☞ **False** 1. A performance evaluation and a performance assessment exam are the same thing.

☞ **True** / ☞ **False** 2. Once an eligible list is established, you cannot change the geographic areas for which you are willing to accept a position in that title.

☞ **True** / ☞ **False** 3. Statewide eligible lists are not necessarily available for every civil service exam.

*Answers on page 4*

**§70.4 Transfers**

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proper. PEF then filed a written appeal and requested a formal conference before the CSC.

Ultimately, the CSC concurred with PEF and determined that PTB scores could not be used for the purpose of granting §70.4 transfers. The Commission also indicated that the incumbents of these positions would have to take and pass the open-competitive exam for this title in order to be considered for permanent appointment via the §70.4 process.

This issue underscores the importance of member vigilance since, absent member inquiry, the issue may never have come to PEF's attention. Moreover, it demonstrates that while the vast majority of appointments are legitimate, some are not, and timely information can help rectify those situations.



Visit *The Enforcer* on the PEF website! Click on "PEF Departments", "Civil Service Enforcement", and "The Enforcer." Both current and back issues are available. Spread the word!

**<http://www.pef.org>**

### Exam Tips



The NYS Department of Civil Service (DCS) has recently begun registering individuals to receive e-mail notifications whenever new Civil Service exam announcements are added to the DCS website. To register, visit [www.cs.state.ny.us](http://www.cs.state.ny.us); click "Jobs,"

"Examinations for Positions in State Government," and "New Announcements – Email Notice", and follow the registration instructions. It's quick, free, and confidential.

### Update: PTB to Change from Fall to Spring



The Department of Civil Service (DCS) indicated that it is planning to change the dates for the annual holding of the Promotion Test Battery (PTB). According to DCS, the PTB will no longer be held in the fall, but will instead be scheduled sometime during March/April of 2004 and subsequent years. Exact dates for the 2004 holdings are not yet available. The initial change will necessitate a one-time delay in the annual holding of the PTB, as none will be held in the fall of 2003.

### Update: Performance Assessment Dropped from Banking Dept. Exam

The performance assessment component has been dropped from the civil service promotion exam for the Principal Bank Examiner 1 title in the Banking Department. Instead, the exam will consist of written and oral tests. According to the exam announcement, the oral test will consist of a video format in which the candidate makes a presentation before a facilitator; two evaluators later review and score the presentation.

### Test Your CS IQ – Answers

1. **False** – A performance evaluation is a supervisor's official assessment of an employee's performance, usually on an annual basis, for the purposes of offering feedback and guidance. Eligibility for performance advances and awards is tied to this process. A performance assessment exam is a type of civil service exam. Generally for this type of exam, a candidate must write statements about his or her own job performance or work experience; these statements are then rated by the employee's supervisor and reviewed by a panel. The resulting score either comprises the entire exam score or is combined with other types of tests (written, oral, etc.). PEF continues to closely monitor the use of performance assessment exams, which we believe are particularly susceptible to subjective error.
2. **False** – At any time during the life of an eligible list, you can contact the Department of Civil Service (DCS) and indicate changes in the geographic areas in which you are willing to accept a position. PEF recommends that members keep their options open by indicating interest in as many geographic areas as possible. If necessary, candidates can declare themselves "temporarily unavailable" when canvassed for a specific position, without jeopardizing their standing on the list for positions in other geographic areas.
3. **True** – For some exams, such as continuous recruitment exams for which the State accepts applications at any time, statewide eligible lists are not generated because the lists change too quickly. Instead, DCS waits until an agency needs to fill a position and then generates a *certified eligible list* for that geographic area. Even when a statewide list exists, a certified list for that geographic region is generated and used. These certified lists last for sixty days.